

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

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|---------------------------|---|------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 3:10-MJ-1001 |
| |) | |
| BRIAN ANDREW FOX, |) | (SHIRLEY) |
| |) | |
| Defendant. |) | |

ORDER

This matter came before the undersigned for a preliminary hearing pursuant to Federal Rule of Criminal Procedure 5.1 on January 19, 2010. Assistant United States Attorney Alexandra Hui appeared on behalf of the Government. Attorney Steven B. Ward represented the Defendant, who was also present.

At the hearing, Trooper Kelly Smith of the Tennessee Highway Patrol testified that he conducted a traffic stop of a car belonging to the Defendant and in which the Defendant was a passenger on January 13, 2010. Following the traffic stop, the Defendant consented to an officer circling his car with a police dog. The police dog alerted on the vehicle, which was then searched by law enforcement. In the console, the officers found medication bearing prescription labels in the Defendant's name. On the backseat, Officers found a Teddy bear containing five hundred oxycodone pills, fifty Oxycontin pills, and one Xanax pill in unlabeled pill bottles. Although both the Defendant and the driver denied knowledge of the drugs inside the Teddy bear at that time, on the following day, the Defendant admitted that he had placed the pills inside the bear. Trooper Kelly testified that both the quantity of pills and their location inside of a stuffed animal were inconsistent

with personal use.

The Criminal Complaint [Doc. 1] alleges that on January 13, 2010, the Defendant knowingly, intentionally, and without authority possessed oxycodone with intent to distribute in violation of 21 U.S.C. § 841(a)(1). The Court finds probable cause to believe the crime occurred based upon the testimony that the Defendant was in his vehicle in close proximity to oxycodone hidden in a stuffed animal located on the backseat and that the amount of oxycodone and its location inside a stuffed animal indicated an intent to distribute. The Court finds probable cause to believe that the Defendant was the person who committed the crime based upon the foregoing and the Defendant's admission to law enforcement. Based upon Trooper Kelly's testimony, the Court finds there is probable cause to believe the charged offense was committed and that it was committed by the Defendant. See Fed. R. Crim. P. 5.1. Accordingly, it is **ORDERED** that the Defendant is therefore held to answer in the District Court.

IT IS SO ORDERED.

ENTER:

s/ C. Clifford Shirley, Jr.
United States Magistrate Judge